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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,804	04/06/2001	Masaomi Takagi	040679/1246	6447

22428 7590 09/11/2003

FOLEY AND LARDNER  
SUITE 500  
3000 K STREET NW  
WASHINGTON, DC 20007

EXAMINER

CULBRETH, ERIC D

ART UNIT	PAPER NUMBER
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3616

DATE MAILED: 09/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/826,804		TAKAGI ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Eric D Culbreth		3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,6-19,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 1-4,6-8 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-16,18,19,21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings were received on 6/27/03. These drawings are approved.

### ***Specification***

2. The amendment filed 6/27/03 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The disclosure of Figure 17 added after page 1, line 13 contains new matter when it refers to Figure 17 being "electric resistance weld tube A" (there is no disclosure in the original specification, including at page 5, line 13 – page 6, line 5, that Figure 17 is an electric resistance weld tube).

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

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claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 18-19 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 6-99870 in view of Japanese Patent 5-65076 (both of record).

Japanese '870 discloses a vehicular member construction comprising a pair of spaced longitudinal side members 5 and a cross member 6 connecting the side members. At least one of the side members and cross member (i.e., each side member 5) has a hollow cross section as seen in Figure 4 with a reinforcement 5a, 5b inside. At least a part at o in Figure 4 of the side wall 5 is thicker in cross section than the reinforcement 5a, 5b. However, Japanese '870 does not teach clearly a cross shaped portion extending thoroughly to the ends of the side or cross member. Japanese '076 discloses reinforcements similar to those of Japanese '870 (see Figure 5 of

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Japanese '076) are interchangeable with cross shaped reinforcements 3, 4 in Figure 1 and that the cross shaped portion extends throughout the length of the member (see Figures 2 and 15, and the English abstract, where the side member is extruded of light aluminum alloy, which would result in the same cross section throughout the piece). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Japanese '870 to include a cross shaped portion extending throughout the side member(s) as taught by Japanese '076 in order to increase collisional energy absorbing amount using structure taught by Japanese '076 as alternative to Japanese '870's reinforcement structure (see PURPOSE section of English abstract). As just noted, Japanese '076 in the combination teaches aluminum alloy (Japanese '870 teaches aluminum), and the other features of claims 19 and 22 involve how the structure is made, which is not patentably distinguishing in an article claim (MPEP 2113). In the combination (claim 21), Japanese '870 teaches at least one side wall of the side member 5 at o being thicker than at least one of the reinforcement walls 5a, 5b, and this would teach in the combination one of the side member side walls being thicker than at least one of the cross walls of the cross shaped portion.

7. Claims 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 61-291272 (of record) in view of Japanese '870.

Japanese '272 discloses hollow side members 1, 2 with thick and thin wall portions in Figure 5 and cross members 3, 3, 3, 3 interconnecting the side members. However, Japanese '272 does not clearly disclose monolithic thick and thin wall portions (as the dictionary definition of "monolithic" includes "solid" and "uniform", the thick and thin portions welded

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together in Japanese '272's Figure 5 could be considered to make a solid and uniform or monolithic structure). Japanese '870 discloses in Figure 4 a monolithic side wall 5 with thick and thin portions. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Japanese '272 to include monolithic thick and thin portion side walls as taught by Japanese '870 in order to extrude the side frames (English Abstract) and hence simplify production (claim 9). How the longitudinal members are formed (claims 10-11) is not patentably distinguishing in an article claim; at any rate, in the combination Japanese '870 teaches extrusion in the English abstract and bending in Figure 2, where the extruded members 5 are no longer linear. Japanese '870 also teaches aluminum in the English abstract. Regarding claims 12 and 13, again, the shape of the pipe that is eventually formed into the side member is not patentably distinguishing in an article claim. Regarding claim 14, bracket 7 is attached to the outer thick wall 11 for linking the side member and a wheel as functionally recited (i.e., "for linking a side member and a wheel"). The manner in which the walls are formed (claim 15) is not patentably distinguishing in an article claim, and the dies used for making the member (claim 16) are not patentably distinguishing, since the preamble of the claim(s) defined the invention as a vehicular member construction.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D Culbreth whose telephone number is 703/308-0360. The examiner can normally be reached on Monday-Thursday, 9:30-7:00 alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 703-308-2089. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Eric D Culbreth  
Primary Examiner  
Art Unit 3616

  
9/9/03

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